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SIGNIFICANCE OF THE PORTO RICAN PROBLEM.

BY L. S. ROWE, UNITED STATES COMMISSIONER TO REVISE AND
COMPILE THE LAWS OF PORTO RICO.

THE problem of government in Porto Rico is unique. The analogies with the Philippine situation are remote and, in many respects, misleading. Even the experience of England and France in the West Indies is of but little value. The history of these islands seems one long series of changes of sovereignty, Spain, France, and England having in turn made them the football of colonial politics. Little thought was given either to the rights of the native population or to their system of law. Although in some cases representative institutions were established, sufficient power was usually retained by the executive authority to overcome opposition; and, with every change of sovereignty, a radical change in the private as well as the public law was effected. It is true that in but few cases were local political traditions sufficiently developed to require much care or thought in adapting insular institutions to a new régime.

In Porto Rico, however, an entirely different situation confronts the United States. The Spanish civilization, with its highly organized political and administrative system, and its carefully developed and complex codes, was, in form at least, extended to the West Indian possessions. We, therefore, meet a population accustomed to a system of law quite as carefully worked out as our own, although in parts constructed on a different basis. Looked at from this point of view, the Philippine problem is simpler than the Porto Rican. The United States Philippine Commission has to deal with a people whose political traditions are as yet unformed, the great majority having still to pass through the first stages of political training. The form of con-

trol must, therefore, be more or less absolute, in order to secure the first requisite for stable government, the maintenance of order.

The problem is by no means so simple in Porto Rico. As far as the private law is concerned, the traditions have been formed and are as definite as those of Spain itself. It is out of the question, therefore, to sweep away at one fell blow the entire structure. Such a policy would throw the institutional life of the people into a state of confusion, and inevitably lead to anarchy and disintegration. We must not make an Alsace-Lorraine of Porto Rico. The population, far from being opposed to American rule and American institutions, is anxious to enjoy the benefits of these, and will aid us in every possible way to make their introduction easy. But Americanization must take place gradually, and foster rather than destroy the spirit of legality, guiding it into new channels and developing it in directions neglected by the Spanish system. While, in the strict interpretation of law, our rights in the Island are those of a conqueror, it has not occurred to any one, nor would the American people tolerate, that we should do violence to the institutions of the country. With the exception of the native Spanish element resident in the Island, the American government was welcomed by the entire population; and there is no reason why this feeling should not continue, provided we approach the problem in the proper spirit.

The first step necessary to bring the Island closer to us in political thought and feeling, is the thorough revision of the public law. This can be done all the more readily because of the policy, consistently pursued by Spain, of discouraging active participation in public affairs by the native population. Throughout the history of Spanish domination, the Porto Rican element was classed as "second class Spaniards." The highly centralized form of government which prevailed enabled the Spanish government to place its own agents in every position of importance, whether in the provinces or in the municipalities. For the American government this is at once an advantage and a drawback. It is an advantage, because it clears the way for new institutions, more distinctly American in character. It is a drawback, because of the resulting lack of political training: a fact which will prevent the immediate introduction of that form of local self-government which is usually regarded as a necessary

part of the American system. For some time to come, we must be prepared to centralize the administration in Porto Rico to a greater degree than in the States of the Union. This necessity is not one, however, from which we need shrink, as the tendency toward administrative centralization is characteristic of our State institutions at the present time. In Porto Rico, we must permit the Insular Government to prescribe to the local authorities the minimum standard of efficiency, and we must furnish it with the means of enforcing this minimum. Unless this is done, the system of local government will never reach the degree of efficiency which the situation requires.

The revision of the criminal, civil and commercial codes, and of the codes of criminal and civil procedure, presents difficulties greater, in some respects, than the revision of the public law. As stated above, the reorganization of the system of government and administration, with a view to bringing it closer to American principles, will be welcomed by the people of the Island. In the private law, however, an entirely different situation confronts us. Both the civil and the commercial codes have been worked out with great care, and represent a more advanced system of law than exists either in Mexico or South America.

The period of liberalism which prevailed in Spain during the sixties and seventies witnessed a profound transformation in the legal system. A large body of jurists, who had received their training in foreign countries—namely, in Germany and France—began the revision of the antiquated system which was based on the "*Siete Partidos*." The series of compilations, of which the civil and commercial codes and the mortgage law are the most important, gave a new basis to the legal system of the mother country. Both Cuba and Porto Rico received the benefit of these changes, and we thus find a body of civil law which, in some respects, is superior to both the French and German systems. That they have not fulfilled every expectation has been due, in part at least, to the fact that they are intended for a civilization more complex than that of Porto Rico. The most important problem which the revision of the civil and commercial codes presents is to simplify the system in certain parts, and to eliminate those institutions which have been imported from France and Germany, but which have failed to take root.

On the other hand, the existing criminal code requires the

most thorough revision. Its more primitive character is explained by the fact that it was never subjected to the tests of the more modern penal codes, as is shown in the failure adequately to protect personal rights and in the tendency to punish offenses against property with undue severity. It fails, furthermore, to make proper use of a system of fines, confining itself almost exclusively to the penalty of imprisonment. As a result, a considerable number of offenses, such as are comprised in the articles on restraint of trade, remained unpunished, owing to the unwillingness of the courts to inflict imprisonment where the act involved is *mala prohibita* rather than *mala in se*. The grading of punishment is, furthermore, far removed from our modern standards of right and wrong, and will have to undergo thorough revision.

The codes of civil and criminal procedure will require simplification, in order to make their operation less cumbersome and more rapid. Here the simplicity of procedure which characterizes some of our Western States' codes can readily be introduced without violating any settled traditions. In fact, the adaptation of the Spanish to the American system of private law can be best begun through the codes of procedure. One important change made under the military government strikingly illustrates this fact. Previous to American occupation, civil cases were heard upon written depositions. The introduction of the public, oral trial has been most favorably received, and there is at present no thought of returning to the more primitive procedure. In short, the American system of procedure, particularly that of the code States, is capable of adaptation to the Spanish codes, and will even result in giving to the latter greater force and effect.

While, at first glance, the possibility of reconciling the American and Spanish systems seems remote, a close study of both will show that such a blending is by no means impossible. In fact, it is a combination which must be made, if we are to meet the obligations forced upon us by the administration of our new possessions. It is true that the questions presented are new to us and, in the form they have taken, find no parallel in the history of modern Europe. American rule means orderly development rather than oppression, and must, therefore, effect a gradual combination of the two systems of law rather than a violent substitu-

tion of one for the other. The latter policy would arouse a form of opposition which would thwart every effort to Americanize the Island. We must gradually accustom ourselves to the thought that the "American system" does not necessarily mean either the English common law or the extreme form of decentralized government to which we have hitherto been accustomed. In fact, the lessons which our new possessions are teaching us will broaden our view of political and legal systems, and prepare us for the larger obligations which our position in the Western Hemisphere has forced upon us. The more thorough comprehension of the strength and weakness of Spanish-American institutions, which must come in the close contact with these practical questions of law and government in Porto Rico, may prepare the way for that closer relationship with the South American republics which the logic of our present situation demands. The feeling of distrust which has existed will disappear, when it is clearly seen that there is nothing in the two civilizations to prevent the fullest co-operation. If, on the other hand, we deal harshly with Porto Rico, the feeling of distrust, of which there were symptoms during and after the recent war, will turn into fear and hatred; and the Monroe Doctrine, instead of being a permanent basis for the maintenance of friendly relations with all nations, will become a byword for aggression and misrule.

In the solution of the Porto Rican problem we are being subjected to a supreme test as an expanding nation. If we fail, our influence in the Western Hemisphere cannot long continue; if we succeed, our position of primacy will receive the sanction of every American country, and the Monroe Doctrine will acquire a new significance.

L. S. ROWE.